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MEMORANDUM

DATE: November 6, 2001
TO: Mark A. Kutney, AICP, Development Service
CC: Tom Willi, Town Administrator
Councilmember Susan Starkey
FROM: Monroe D. Kiar *MK*
RE: Control Number 011012
Cost Recovery Ordinance

TOWN OF DAVIE
2001 NOV -6 P 3 22
ADM. SVC. DEPT.

Attached please find a copy of an initial draft of a Cost Recovery Ordinance. I have reviewed the information provided to Councilmember Starkey from the Cities of Plantation and Miramar, and have utilized much of the material provided to her in the preparation of this initial draft of the Ordinance.

Your comments are greatly appreciated.

MDK/gmv
enclosure

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA PROVIDING FOR COST RECOVERY TO REIMBURSE THE TOWN OF DAVIE FOR SPECIAL COSTS INCURRED BY THE TOWN IN THE PROCESSING OF APPLICATIONS FOR DEVELOPMENT PERMITS, CONTAINING PROVISIONS FOR COST RECOVERY ACCOUNTS; PROVIDING FOR IMPLEMENTATION OF THE COST RECOVERY PROGRAM; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council of the Town of Davie wishes to assure that the Town fairly assesses Developers for the cost of providing the services necessary to issue development permits; and

WHEREAS, a cost recovery system for special services is deemed the best way to do so;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

SECTION 1. Definitions:

"Cost Recovery Account". An account with the Town of Davie, funded by an applicant for a development permit, to pay for the costs of special services.

"Special Services". Any services required by the Town Attorney, Town Engineer, Planning Staff, or other Town Department, employee or outside consultant, in drafting development agreements, reviewing or drafting deed restrictions, or drafting or reviewing any special documents, including agreements, deeds, conveyances, security instruments, restrictive covenants, or special conditions, or other documentation necessary for the granting of a development permit or order; this term shall also include any services of the Public Works, Utilities Department, other Town

departments, or Town Administration, in excess of those services normally required to review an application for a development permit.

SECTION 2. Recovery of costs of administrative review and processing.

- (a) There is hereby imposed a charge for special services for processing and review of applications, submissions, or requests concerning proposed matters within the Town of Davie or concerning development, utilization, or improvement of realty in the Town of Davie, such charges to be equal in an amount to the Town's actual costs, in terms of time expended by outside consultants or staff in such review, including fringe benefits, directly related charges and the cost of administering this ordinance.
- (b) Persons who file any review request which in the sole discretion of the Town Administrator or his/her designee necessitates special services shall pay prior to or at the time the review request is made, an initial preliminary deposit which shall be credited toward the future amount charged for such special services and shall pay additional deposits as may be required from time to time.
- (c) When the person requires the initial deposit, a financial account for said person's review request (the "project account") will be opened and maintained throughout the entire review process. The "cost recovery account" and resulting "project accounts" set up pursuant to this ordinance refer to separate accounts in the accounting records of the Town and shall not be construed to require the establishment of a separate bank account. Monies received will be deposited in a single, non-exclusive bank account and adequate accounting records will be maintained to reflect and control the restricted allocation of these funds.

- (d) When (1) the person receives a certificate of occupancy, or (2) the Development Services Department determines that no further action is necessary for the review and processing of the review request, or (3) the applicant voluntarily withdraws, the project account will be closed after all outstanding charges are paid. When a project account is closed, any remaining funds shall be refunded to the person depositing same, no later than two (2) months after the project account closing date. If any amounts are due to the Town when the project account is closed, the Town will charge the person for the balance due, and the person shall pay the balance (or contest it as set forth in this ordinance) before any further action is taken by the Town on the application. The project account will be monitored on a periodic basis. Whenever the account balance falls below 50% of the initial deposit, a supplemental deposit will be required before any further review or processing continues. The person making the initial deposit will be notified when a supplemental deposit will be required. The amount of the supplemental deposit will be forty (40%) percent of the initial deposit. Several supplemental deposits may be necessary, depending on the complexity of the review request. The need for an amount of all supplemental deposits will be calculated based on the amount of the initial deposit.
- (e) The Town's staff and outside consultants who are involved in the provision of special services shall maintain records of the time expended and tasks conducted regarding each such request. The total costs established based upon the time expended and the applicable hourly rate, fringe benefits, and directly related charges, shall be charged against the project account. The project account shall also be charged a 10% fee to

reflect the costs of administering this program. All records of time expended, together with the corresponding costs shall be provided to the Town Administrator on a monthly basis.

- (f) When the Town Administrator or his/her designee determines that special services will be required for an application, the amount of the initial deposit for the different types of review requests shall be established, and from to time, amended by resolution of the Town Council, but the Town Administrator or his/her designee may be permitted to increase or decrease said established initial deposit by up to 10% based upon the judgment of the Town Administrator or his/her designee without Council approval as to the amount of special services which will be required. It is the expressed intent of the Town Council and the Mayor of the Town of Davie, Florida, in enacting this cost recovery program that the Town's costs of excess staff services, outside consultant services, and administration, as required or necessitated now or in the future of the Town's ordinances, resolutions, policies, or procedures shall be borne by the person initiating the review request.
- (g) Any applicant who contends that the funds being charged pursuant to this cost recovery system are excessive, may appeal the decision of the Town Administrator or any funds being charged, to the Town Council who will hear said appeal within forty-five (45) days of said appeal. The decision of the Town Council on said appeal shall be final. During the time of such appeal, no development permit shall be processed or issued except in such cases where the developer pays to the Town the funds required in the cost recovery system, noting on said payment that they have

been paid under protest subject to the appeal being undertaken by the applicant for a development permit.

- (h) The provisions contained herein are in addition to any presently existing or subsequently enacted permit or development review fees.
- (i) This program shall not apply to review requests which are originally initiated by or on behalf of the Town of Davie or another governmental entity acting in its governmental capacity; such as, but not limited to, Department of Transportation highway proposals review, review of Broward County transportation improvements, review of proposed amendments to the Broward County or other local land use plan, and review of developments of regional impact; provided however, that the initiating governmental entity does not charge the Town of Davie for its review, processing, and comment upon the Town of Davie's review requests of a similar type or nature.
- (j) Except as provided herein, any notification provided in this section for supplemental deposits from the Town of Davie to a person initiating a review request shall be deemed sufficient, if made by a telephone call to such person or his or her agent with a confirming certified letter to follow. It shall be the duty of persons initiating review requests to provide in the file for the review request a continuously updated address and telephone number where said persons or their agents can be reached for purposes of such notification. If an attempt to notify a person initiating a review request or his or her agent is frustrated because such furnished phone numbers or addresses were not correct or up to date when the notification attempt was made, such frustrated attempt shall be deemed sufficient notice for purposes of this section.

SECTION 3. Should any part of this Ordinance be declared unenforceable by a court of law, that shall not affect the remainder hereof which shall still remain in full force and effect.

SECTION 4. This Ordinance shall be made a part of the Town of Davie Code and the provisions herein may be renumbered for such purpose.

SECTION 5. This Ordinance shall take effect upon its passage and adoption.

SECTION 6. This Ordinance was adopted after a public hearing was held upon the subject matter hereof. Notice of hearing was published as required by law, which public hearing was held at _____ o'clock on the _____ day of _____, 2001, in the Town Council Chambers, Davie, Florida.

PASSED ON FIRST READING by the Town Council of the Town of Davie, Florida on this _____ day of _____, 2001.

PASSED AND ADOPTED ON SECOND READING by the Town Council of the Town of Davie, Florida on this _____ day of _____, 2001.

TOWN OF DAVIE, FLORIDA

HARRY VENIS, MAYOR

ATTEST:

RUSSELL MUNIZ, TOWN CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

MONROE D. KIAR, TOWN ATTORNEY